

GILMORE FACES DECISIONS AS INMATES SEEK DNA TESTS

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In the coming weeks, Gov. Jim Gilmore will have to decide, as his Texas counterpart George W. Bush did, whether to approve DNA tests for men facing imminent execution.

Lawyers for Russel William Burket, scheduled to be executed Aug. 30, and Derek Rocco Barnabei, whose execution is expected to be set for Sept. 14, both want DNA tests that they hope will prove their clients innocent.

Gilmore spokesman Mark A. Miner said it would be premature to comment on either case.

On June 1, just minutes before Ricky McGinn was to die by injection for the rape and murder of a 12-year-old girl, Bush postponed the execution so additional DNA testing could be done. It was the first reprieve in his administration.

Earlier this week, USA Today reported that preliminary results of the test failed to clear McGinn.

But the Republican presidential candidate's

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approval of the testing could clear the way for similar tests in other states.

"Bush showed the way. He's made it easier for law-and-order Republican governors to order DNA tests without the right wing getting unhappy," said political ana

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lyst Larry J. Sabato, director of the University of Virginia's Center for Governmental Studies.

"It's obvious that the safe course is to order DNA tests," he said, because the inmate could really be innocent and if he is not, the test would not delay an execution for long. "The support for capital punishment in this state is very strong in both parties. .*. So, would Gilmore be hurt badly if he didn't order the DNA tests? No. Not in Virginia."

But, said Sabato, "given his interest potentially in a Cabinet position or some other appointment from George Bush, it wouldn't hurt for him to follow the Bush model."

Last month, on the same day Bush ordered a DNA test for McGinn, Gilmore ordered new DNA testing for former death row inmate Earl Washington Jr. Washington had been sentenced to die for a rape and murder until a 1993 DNA test cast strong doubt on his guilt.

At that time, Gov. L. Douglas Wilder commuted Washington's sentence to life in prison. Since then, new DNA testing techniques have been developed that could prove whether Washington was the killer. The test results are still pending.

Burket's request for new DNA testing is already before Gilmore, and lawyers for Barnabei said yesterday that a formal request for testing is being written. The U.S. Supreme Court stopped the execution of Burket just 75 minutes before he was to die on June 21. But the court later decided not to hear his case after all, freeing the Virginia Beach Circuit Court to set an execution date.

Burket, 32, was sentenced to die for the January 1993 slaying of Katherine Tafelski and her 5-year-old daughter, Ashley Tafelski, in their Virginia Beach home. Each victim was beaten to death with a rusty crowbar.

Burket also wounded Andrew Tafelski Jr., 3, and Chelsea Brothers, 3, who had been spending the night at the

Tafelski home. Burket was a neighbor. Tafelski's husband, Andy Tafelski, a Navy SEAL, was away from home when the slayings occurred.

In a clemency petition presented to Gilmore last month, Burket asked for a new, more sophisticated DNA test to be performed on a wash cloth found at the scene of the crime.

Andrew A. Protogyrou, one of Burket's lawyers, said yesterday that clemency requests are normally last-minute appeals but because of the court-delayed execution, there's time to have the DNA testing performed without delaying the scheduled execution.

"We have time and hopefully they'll see fit to have it done," said Protogyrou.

Likewise, in the Barnabei case, there is time to conduct the desired tests, say his lawyers.

"We haven't made the formal request yet but we will be doing that," said Seth A. Tucker, of Washington, one of Barnabei's lawyers. Tucker said there's been a request by the state to set the execution date for Sept. 14.

A hearing will be held next Wednesday to actually set the date, said Tucker.

Barnabei, 33, was sentenced to death in 1995 in Norfolk Circuit Court for the rape and capital murder of Sara J. Wisnosky, a 17-year-old freshman at Old Dominion University.

Her nude body was discovered in the Lafayette River in Norfolk on Sept. 22, 1993. She had been beaten - suffering 10 blows to the back and right side of her head, possibly from a ball peen hammer - and strangled.

Wisnosky, of Lynchburg, and Barnabei began dating for several weeks before her death. Her blood was found on a bed, the walls and a surfboard in Barnabei's room in a Norfolk house he shared with several other men.

DNA testing proved Barnabei's sperm was inside Wisnosky, but Barnabei contends the sex was consensual and that someone else killed her. Police did not test blood found under Wisnosky's fingernails. That is what Barnabei wants tested.

Credit: Times-Dispatch Staff Writer

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Abstract (Document Summary)

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